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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND	)	Case No.
PLUMBING, INC., individually and on)	
behalf of all others similarly situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS
ELITE FUNDING GROUP, INC. d/b/a	)	OF THE TELEPHONE
ONE WAY FUNDING, LLC, and	)	CONSUMER PROTECTION
DOES 1 through 10, inclusive, and each	)	ACT [47 U.S.C. §227(b)]
of them,	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
Defendant.	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
)	
)	
	)	<u>DEMAND FOR JURY TRIAL</u>

1 Plaintiff, ABANTE ROOTER AND PLUMBING, INC., (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of ELITE FUNDING GROUP, INC.
8 d/b/a ONE WAY FUNDING, LLC (“Defendant”), in negligently, knowingly,
9 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of
10 the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and
11 related regulations, specifically the National Do-Not-Call provisions, thereby
12 invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendant, a
17 corporation licensed in New York, doing business within and throughout
18 California. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation
19 of the TCPA, which, when aggregated among a proposed class in the thousands,
20 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
21 diversity jurisdiction and the damages threshold under the Class Action Fairness
22 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern
24 District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does
25 business within the State of California and Plaintiff resides within the County of
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),

1 is a corporation of the State of California, whose principal place of business is in
2 the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

3 5. Defendant, ELITE FUNDING GROUP, INC. d/b/a ONE WAY
4 FUNDING, LLC (“Defendant”) is a small business loan financing company, and
5 is a “person” as defined by 47 U.S.C. § 153 (39).

6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
12 Complaint to reflect the true names and capacities of the DOE Defendants when
13 such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and
15 every Defendant was acting as an agent and/or employee of each of the other
16 Defendants and was acting within the course and scope of said agency and/or
17 employment with the full knowledge and consent of each of the other Defendants.
18 Plaintiff is informed and believes that each of the acts and/or omissions complained
19 of herein was made known to, and ratified by, each of the other Defendants.

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around July 7, 2015, and continuing through
22 December of 2017, Defendant contacted Plaintiff on Plaintiff’s cellular telephone
23 numbers ending in -7511, -5154, -6147, -7210, and -7447 in an attempt to solicit
24 Plaintiff to purchase Defendant’s services.

25 9. When Plaintiff would answer Defendant’s calls, it experienced an
26 automated voice message, prompting Plaintiff to press “one” to talk to a live person
27 that would begin speaking to encourage Plaintiff to purchase Defendant’s services.

28 10. Defendant used an “automatic telephone dialing system” as defined

1 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

2 11. Defendant contacted or attempted to contact Plaintiff from telephone
3 numbers belonging to Defendant, including without limitation: (516) 543-3272,
4 (516) 246-8128, (516) 246-8068, (631) 239-8731, and (516) 320-6151.

5 12. Defendant's calls constituted calls that were not for emergency
6 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

7 13. Defendant's calls were placed to telephone numbers assigned to a
8 cellular telephone service for which Plaintiff incurs a charge for incoming calls
9 pursuant to 47 U.S.C. § 227(b)(1).

10 14. During all relevant times, Defendant did not possess Plaintiff's "prior
11 express consent" to receive calls using an automatic telephone dialing system or an
12 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
13 227(b)(1)(A).

14 15. Further, two of Plaintiff's cellular telephone numbers, ending in -7511
15 and -5154, were added to the National Do-Not-Call Registry on or about August
16 27, 2009 and February 21, 2007, well over thirty (30) days prior to Defendant's
17 initial calls to Plaintiff.

18 16. In addition, Plaintiff requested numerous times that Defendant put its
19 cellular numbers on Defendant's internal Do-Not-Call list. Despite such requests,
20 Defendant continued to call Plaintiff's cellular telephones.

21 17. Defendant placed multiple calls soliciting its business to Plaintiff on
22 its cellular telephones beginning on or about July of 2015 and continuing until on
23 or about December 20, 2017.

24 18. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
25 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

26 19. Plaintiff received numerous solicitation calls from Defendant within a
27 12-month period.

28 20. Defendant continued to call Plaintiff in an attempt to solicit its

1 services and in violation of the National Do-Not-Call provisions of the TCPA.

2 21. Upon information and belief, and based on Plaintiff's experiences of
3 being called by Defendant after being on the National Do-Not-Call list for several
4 years prior to Defendant's initial call, and at all relevant times, Defendant failed to
5 establish and implement reasonable practices and procedures to effectively prevent
6 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
7 227(c)(5).

8 **CLASS ALLEGATIONS**

9 22. Plaintiff brings this action individually and on behalf of all others
10 similarly situated, as a member the three proposed classes (hereafter, jointly, "The
11 Classes").

12 23. The class concerning the ATDS claim for no prior express consent
13 (hereafter "The ATDS Class") is defined as follows:

14 All persons within the United States who received any
15 solicitation/telemarketing telephone calls from
16 Defendant to said person's cellular telephone made
17 through the use of any automatic telephone dialing
18 system or an artificial or prerecorded voice and such
19 person had not previously consented to receiving such
20 calls within the four years prior to the filing of this
Complaint

21 24. The class concerning the ATDS claim for revocation of consent, to the
22 extent prior consent existed (hereafter "The ATDS Revocation Class") is defined
23 as follows:

24 All persons within the United States who received any
25 solicitation/telemarketing telephone calls from
26 Defendant to said person's cellular telephone made
27 through the use of any automatic telephone dialing
28 system or an artificial or prerecorded voice and such
person had revoked any prior consent to receive such
calls prior to the calls within the four years prior to the

filing of this Complaint

25. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant’s products or services, within any twelve-month period, within four years prior to the filing of the complaint.

26. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

27. Plaintiff represents, and is a member of, The ATDS Revocation Class, consisting of all persons within the United States who received any solicitation/telemarketing calls from Defendant to paid person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

28. Plaintiff represents, and is a member of, The DNC Class, consisting of all persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant’s products or services,

1 within any twelve-month period, within four years prior to the filing of the
2 complaint.

3 29. Defendant, its employees, and agents are excluded from The Classes.
4 Plaintiff does not know the number of members in The Classes, but believes the
5 Classes members number in the thousands, if not more. Thus, this matter should
6 be certified as a Class Action to assist in the expeditious litigation of the matter.

7 30. The Classes are so numerous that the individual joinder of all of its
8 members is impractical. While the exact number and identities of The Classes
9 members are unknown to Plaintiff at this time and can only be ascertained through
10 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
11 The Classes includes thousands of members. Plaintiff alleges that The Classes
12 members may be ascertained by the records maintained by Defendant.

13 31. Plaintiff and members of The ATDS Class were harmed by the acts of
14 Defendant in at least one of the following ways: Defendant illegally contacted
15 Plaintiff and ATDS Class members via their cellular telephones thereby causing
16 Plaintiff and ATDS Class and ATDS Revocation Class members to incur certain
17 charges or reduced telephone time for which Plaintiff and ATDS Class and ATDS
18 Revocation Class members had previously paid by having to retrieve or administer
19 messages left by Defendant during those illegal calls, and invading the privacy of
20 said Plaintiff and ATDS Class and ATDS Revocation Class members.

21 32. Common questions of fact and law exist as to all members of The
22 ATDS Class which predominate over any questions affecting only individual
23 members of The ATDS Class. These common legal and factual questions, which
24 do not vary between ATDS Class members, and which may be determined without
25 reference to the individual circumstances of any ATDS Class members, include,
26 but are not limited to, the following:

- 27 a. Whether, within the four years prior to the filing of this
28 Complaint, Defendant made any telemarketing/solicitation call

(other than a call made for emergency purposes or made with the prior express consent of the called party) to a ATDS Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

33. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

34. Common questions of fact and law exist as to all members of The ATDS Revocation Class which predominate over any questions affecting only individual members of The ATDS Revocation Class. These common legal and factual questions, which do not vary between ATDS Revocation Class members, and which may be determined without reference to the individual circumstances of any ATDS Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone

1 service;

2 b. Whether Plaintiff and the ATDS Revocation Class members
3 were damaged thereby, and the extent of damages for such
4 violation; and

5 c. Whether Defendant and their agents should be enjoined from
6 engaging in such conduct in the future.

7 35. As a person that received numerous telemarketing/solicitation calls
8 from Defendant using an automatic telephone dialing system or an artificial or
9 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
10 is asserting claims that are typical of The ATDS Revocation Class.

11 36. Plaintiff and members of The DNC Class were harmed by the acts of
12 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
13 and DNC Class members via their telephones for solicitation purposes, thereby
14 invading the privacy of said Plaintiff and the DNC Class members whose telephone
15 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
16 members were damaged thereby.

17 37. Common questions of fact and law exist as to all members of The
18 DNC Class which predominate over any questions affecting only individual
19 members of The DNC Class. These common legal and factual questions, which do
20 not vary between DNC Class members, and which may be determined without
21 reference to the individual circumstances of any DNC Class members, include, but
22 are not limited to, the following:

23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant or its agents placed more than one
25 solicitation call to the members of the DNC Class whose
26 telephone numbers were on the National Do-Not-Call Registry
27 and who had not granted prior express consent to Defendant and
28 did not have an established business relationship with

Defendant;

- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members' telephones;
- c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

38. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

39. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

40. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

41. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical

matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

42. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

43. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

44. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

45. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

46. Plaintiff and the ATDS Class and the ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

47. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-42.

2 48. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple knowing and/or willful violations of the TCPA, including but not
4 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
5 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

6 49. As a result of Defendant's knowing and/or willful violations of *47*
7 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class and the ATDS Revocation Class
8 members are entitled an award of \$1,500.00 in statutory damages, for each and
9 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

10 50. Plaintiff and the Class members are also entitled to and seek injunctive
11 relief prohibiting such conduct in the future.

12 **THIRD CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(c)**

15 **On Behalf of the DNC Class**

16 51. Plaintiff repeats and incorporates by reference into this cause of action
17 the allegations set forth above at Paragraphs 1-42.

18 52. The foregoing acts and omissions of Defendant constitute numerous
19 and multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
21 *47 U.S.C. § 227 (c)(5)*.

22 53. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
23 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

25 54. Plaintiff and the DNC Class members are also entitled to and seek
26 injunctive relief prohibiting such conduct in the future.

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28 ///

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

55. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

56. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

57. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

58. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and the ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47

1 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled
2 to and request treble damages, as provided by statute, up to \$1,500,
3 for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.

- 4 • An order for injunctive relief prohibiting such conduct by Defendants
- 5 in the future.
- 6 • Any and all other relief that the Court deems just and proper.

7 **JURY TRIAL**

8 59. Pursuant to the Seventh Amendment to the Constitution of the United
9 States of America, Plaintiff is entitled to, and demands, a trial by jury.

10
11
12 Respectfully Submitted this 7th Day of August, 2018.

13 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

14 By: /s/ Todd M. Friedman
15 Todd M. Friedman
16 Law Offices of Todd M. Friedman
17 Attorney for Plaintiff
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